

EXPLANATORY MEMORANDUM

SUMMARY OF ACTIONS TAKEN TO ADJUST PREMIUMS IN COMPLIANCE WITH BULLETIN 2020-3

JUNE 12, 2020

**AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA (20427)
COLUMBIA CASUALTY COMPANY (31127)
CONTINENTAL CASUALTY COMPANY (20443)
THE CONTINENTAL INSURANCE COMPANY (35289)
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD (20478)
TRANSPORTATION INSURANCE COMPANY (20494)
VALLEY FORGE INSURANCE COMPANY (20508)
WESTERN SURETY COMPANY (13188)
SURETY BONDING COMPANY OF AMERICA (24047)
UNIVERSAL SURETY OF AMERICA (13200)**

Introduction

In compliance with Bulletin 2020-3, Continental Casualty Company and its above-referenced subsidiaries and affiliates (hereafter “CNA”) conducted a review of its California business to determine whether certain lines of insurance or products should be considered for premium refunds or adjustments due to the potential for reduced exposure as a result of the “Stay-at-Home” order. This explanatory memorandum summarizes the premium refund or adjustment actions CNA intends to implement on insurance products or segments that warrant consideration, as well as the lines of insurance and products deemed to be out of scope because exposure to loss has not been substantially impacted.

While CNA intends to implement the outlined premium refunds and adjustments in compliance with Bulletin 2020-3, it is our view that temporary reductions in exposure for certain products or segments due to the “Stay-at-Home” order do not render any of CNA’s rates excessive, inadequate or unfairly discriminatory. CNA will continue to closely monitor loss experience and make any necessary adjustments to its filed rates to ensure continued compliance with California laws and regulations.

Summary of Premium Refund Actions and Adjustments

Eligible Policies and Effective Exposure Period:

CNA has defined the exposure period for premium refunds and adjustments to be March 19, 2020 (the effective date of the “Stay-at-Home” order) through the end of May. For policies eligible in March, the premium will be prorated from March 19, 2020 through the end of March, except as specified below.

For eligible lines of insurance, certain circumstances may render an individual policy ineligible for a premium refund or adjustment. These circumstances are outlined below:

- Policies that expired in March prior to March 19, 2020. Policies expiring before the “Stay-at-Home” order would not experience an impact associated with the order.
- New Business written during the period March 19, 2020 through May 31, 2020 if rating is based upon an economically sensitive exposure base (Sales/Revenue or Payroll). These insureds would have the opportunity to provide an appropriately adjusted estimate of exposure.
- Minimum premium policies.
- Workers’ Compensation PayGo Policies. These policies are designed to be responsive to changing conditions as exposures are reported and rated on a monthly basis.
- Small Business UPS Program. UPS stores are considered essential operations, have remained open and have experienced increased sales due to shipping activity during the “Stay-at-Home” order.
- Refund amounts calculated to be less than \$5 for the defined exposure period.
- Certain CNA Connect® (Businessowners) policies. As a part of the filed and approved Connect rating plan, existing policies are subject to a transition plan that limits the increase in premium collected over several years until the filed rating plan rate levels are achieved. To the extent that the calculated premium refund amount for a policy is less than the difference between the manual rating plan and the charged premium, the policies’ premium would not be deemed to be overstating exposure to loss.
- Certain Workers’ Compensation and General Liability policies that are subject to premium audit upon policy expiration. If an expiring policy’s standard premium audit will be completed prior to the August 12, 2020 state deadline for premium refund processing, any necessary exposure adjustments, due to the “Stay-at-Home” order or otherwise, will be reflected and charged premiums will be adjusted, as appropriate.
- Low Impact policies deemed to not be substantially impacted by the “Stay-at-Home” order as outlined in the “Workers’ Compensation, Commercial Multi-Peril and Commercial Liability” section below.

The following chart summarizes the premium refund or adjustment actions CNA intends to implement on insurance products or segments due to reduced exposures as a result of the COVID-19 “Stay-at-Home” order in the state of California. Additional details regarding how these premium refunds and adjustments were determined and how they will be applied are included below.

| Line of Insurance | Premium Refund or Adjustment |
|---|--|
| Commercial Auto | 15% credit applied to premium |
| Workers' Compensation, Commercial Multi-Peril Liability and Commercial Liability – Medium Impact | 10% credit applied to exposures. CNA Connect® and a portion of GL policies will have credit applied to premium |
| Workers' Compensation, Commercial Multi-Peril Liability and Commercial Liability – High Impact | 20% credit applied to exposures. CNA Connect® and a portion of GL policies will have credit applied to premium |
| Workers' Compensation, Commercial Multi-Peril Liability and Commercial Liability – Very High Impact | 30% credit applied to exposures. CNA Connect® and a portion of GL policies will have credit applied to premium |
| WC, GL and Auto - Loss Rated Accounts | Refunds will be issued, as appropriate, after individually assessing COVID-19 impacts on loss exposure |
| Medical Malpractice – Dentists | 50% credit applied to premium rated on 'full-time' basis |
| Medical Malpractice – Allied Healthcare Facilities | Refunds will be issued, as appropriate, after individually assessing COVID-19 impacts on loss exposure |
| Other Liability – Miscellaneous E&O | 50% credit applied to premium for select areas of practice |
| Other Liability – Media Liability | 50% credit applied to film and entertainment companies |

All of the premium refunds or adjustments outlined below will be accomplished by either a return of premium or a premium credit. Policyholders who do not have an outstanding balance due to CNA will receive a check for the amount of the premium refund. Policyholders who have an outstanding balance due to CNA will receive a premium credit for the amount of the premium refund.

Commercial Automobile:

The exposure basis for Commercial Auto is the number of insured vehicles. This exposure measure would generally not be responsive to economic conditions. Due to the reduced traffic volume, however, all insureds are temporarily experiencing a reduced exposure to loss. Therefore, a 15% credit will be applied to the premium for the defined exposure period uniformly for all policyholders without regard to industry.

Workers' Compensation, Commercial Multi-Peril and Commercial Liability:

The California "Stay-at-Home" order differentiated between Essential and Non-Essential businesses. This distinction has resulted in a wide range of impacts to business activities across the commercial sector. Many businesses have been negatively affected due to the COVID-19 crisis, but non-essential businesses have experienced the greatest impacts. However, the impact to non-essential businesses may vary to the extent economic loss can be mitigated via online sales, remote working or other allowable avenues. Essential businesses have generally been able to continue to operate, albeit in a suppressed demand market, and maintain stronger economic viability. In recognizing the intent of the order, CNA followed an approach that differentiates by industry, where appropriate, to most benefit those policyholders that experienced the greatest reduction in exposure to loss.

The true impact of the economic shutdown associated with COVID-19 remains uncertain and definitive conclusions cannot be determined at this early stage of the crisis. However, various data points, including economic data from the Federal Reserve, U.S. Census Bureau, ADP, and the Bureau of Economic Analysis, along with early CNA claim reporting statistics, intuitive implications of the classification of essential and non-essential businesses and sound, informed judgment were considered in determining an appropriate response.

In reviewing this information, industries were assigned to a category based on inferred economic impact. Please note that the impact within “Manufacturing” and “Retail Operations” industries was observed to vary significantly within those sectors. These industries were reviewed at a more granular level and sub-industries assigned across the categories.

- **Low Impact:** Predominantly Essential industries spanning Healthcare to Critical Manufacturing and encompasses industries that generally have the capability of working remotely. Observed metrics tend to point to modest negative economic impact. Examples include Financial Institutions, Construction, Professional Services and Technology.
- **Medium Impact:** Mixed between Essential and Non-Essential in industries that impact the supply chain and are impacted by reductions in demand. Observed metrics tend to point to material negative economic impact. Examples include Real Estate, Education, and Metals and Fabricated Metal.
- **High Impact:** Predominantly Non-Essential or Essential industries that have been affected significantly by reductions in overall demand. Retail is impacted by the ability for on-line sales and/or carry-out services. Observed metrics tend to point to significant negative economic impact. Examples include Department Stores, Eating and Drinking Establishments and Auto Parts Manufacturing.
- **Very High Impact:** Non-Essential businesses with little or no recourse for alternative revenue generation and also may have experienced a dramatic drop in demand. Observed metrics tend to point to severe negative economic impact. Examples include Entertainment, Hospitality and Clothing Retail.

The refund amounts selected were based on judgment and informed interpretation of the collective information outlined above. Industries in the Low Impact category were effectively deemed to not have a substantial reduction in exposure to loss as a result of the “Stay-at-Home” order. Although these industries reflect some adverse indicators, generally speaking, they have not been directly required to close doors and demand for services has not declined below levels experienced in previous economic downturns. Industries categorized as Low Impact will not be issued a refund.

Using this as a base, industries assigned to higher impact categories are deemed to be more significantly impacted by the specific details of the current environment. Refund amounts of 10%, 20% and 30% were selected for the Medium Impact, High Impact and Very High Impact categories, respectively. Application of these refund percentages will vary by line of business depending on operational capability, responsiveness of rated exposures and other considerations.

- **Workers' Compensation:** Premium is derived from payroll which is very responsive to economic conditions and provides a reliable proxy for the economic impact on expected loss. Each impacted policy will be re-rated by applying the previously referenced credits to payroll for the defined exposure period. An accurate assessment of each policy's actual exposure will be completed via audit following policy expiration at which time final premium adjustments will be made to reflect the full annual exposure.
- **General Liability (Including Commercial Multi-Peril Liability and Monoline Liability):** Premium is derived from several exposure bases. Payroll and Sales/Receipts are highly responsive to economic conditions and provide a reliable proxy for the economic impact on expected loss. Approximately 70% of CNA's General Liability premium is rated on these exposures and will be re-rated by applying the previously referenced credits to payroll for the defined exposure period. An accurate assessment of each policy's actual exposure will be completed via audit following policy expiration at which time final premium adjustments will be made to reflect the full annual exposure. For the remainder of the policies, the credit percentages will be applied to the policy premium exposed during the defined exposure period.
- **CNA Connect[®] (Businessowners Policy):** This policy provides both liability and property coverage to CNA's small business customers. The previously referenced credits will be applied solely to the liability portion of the policy. Although liability exposure bases vary, this product is typically not subject to audit. Therefore, the credit percentages will apply directly to the full liability premium portion of the policy with no further adjustments.

Finally, CNA has identified certain large accounts with exposed California premium which is determined by the insured's own loss experience. The coverages purchased by these customers vary, but generally include a combination of Workers' Compensation, General Liability and Commercial Automobile policies. Due to the size of these policyholders, complexity of exposure and potentially unique impact from the COVID-19 restrictions, CNA will assess each of these accounts individually and provide refunds, as appropriate.

Medical Malpractice:

- **Dentists:** Most dentists have been seeing patients only on an emergency basis and regular dental exams have been postponed. In response to this situation, insured dentists not currently rated as "part-time" will be reduced to "part-time" status for 60 days. Our filed and approved part-time credit is 50% for "any dentist who works twenty (20) hours or less per week or less than an aggregate of 1,050 hours during the term of an annual policy". The same credit will be applied to our surplus lines Non-Standard Dentists book of business.
- **Allied Healthcare Facilities:** Exposures in this setting are complex and varied, with the potential for frontline exposure to COVID-19. Moreover, most policies are written on a claims-made basis. Exposure in the current policy period is impacted by the long tailed nature of medical professional liability exposure and is driven by prior acts. As a result, the impact to the exposure in the current policy year is

neither consistent across insureds nor expected to be substantial for most. Therefore no broad premium adjustment is being recommended, but CNA will consider primary policies with predominant exposures in the following classes for potential refunds on a case-by-case basis: ambulatory surgery centers, endoscopy centers, schools, imaging centers and sleep centers. Letters will be mailed to these individual policyholders in order to inform them of their ability to work with their agents to submit evidence of substantially reduced exposure due to COVID-19.

Other Lines of Insurance:

- **Miscellaneous E&O:** Select areas of practice provide services to non-essential entities and have, therefore, been impacted by the "Stay-at-Home" order. The specific areas of practice experiencing a reduction in exposure include: Recruiters and Placement Firms, Business Processing Services, Amusement and Recreation Services, Telemarketing, and Direct Mail Companies. CNA plans a reduction of 50% applied to the written premium for the defined exposure period.
- **Media Liability:** Film and entertainment companies have seen a decline in production activity during this time period, and as a result have a decrease in exposure. CNA plans a reduction of 50% applied to the written premium for the defined exposure period.

Lines of Insurance, Segments or Products Considered Out of Scope

Pursuant to a review of CNA's various lines of business, the following programs and lines of business have been determined to not warrant premium refunds or adjustments at the present time.

Medical Malpractice:

- **Senior Care Facilities (Aging Services):** Senior Care facilities provide a critical and essential service during the time the "Stay-at-Home" order is in effect. Facilities remain open and subject to increased risk. Exposure in the current policy year has not declined and, therefore, no premium adjustment is being recommended.
- **Hospitals and most Allied Healthcare Facilities:** Exposures in these settings are complex and varied, with potential for frontline exposure to COVID-19. Additionally, most policies are written on a claims-made basis. Exposure in the current policy period is impacted by the long tailed nature of medical professional liability exposure and is driven by prior acts. As a result, the impact to the exposure in the current policy year is neither consistent across insureds nor expected to be substantial. Select Allied Healthcare Facility classes will be considered for potential premium refunds on a case-by-case basis. See commentary above for more details.
- **Physicians:** Physicians represent essential services provided during the "Stay-at-Home" order. Many physicians continue to practice both in person and via telemedicine functionalities. Additionally, physician policies are written on a claims-made basis. Exposure in the current policy period is impacted

by the long tail nature of physicians' exposure and is driven by prior acts. As a result, the impact to the exposure in the current policy year is neither consistent across insureds nor expected to be substantial.

- **Healthcare Providers (Nurses and Allied Providers):** Healthcare providers deliver essential services provided during the "Stay-at-Home" order. Many providers continue to practice, either in-person or via telemedicine functionalities, and many are on the frontlines of the pandemic response. As a result, there is not a substantial reduction in exposure and in many cases risk may be increasing.

Other Lines of Insurance:

- **Non-Medical Professional Liability (E&O) products:** E&O policies within this book of business provide professional liability coverage to professionals such as accountants, attorneys, architects, and real estate agents, many of whom fall within essential services or have shifted to a remote work environment. Therefore there is no substantial reduction in exposure. The current state of novel business practices and heightened stress may lead to an environment in which these professionals may be more subject to committing errors, omissions and mistakes. Additionally, policies are written on a claims-made basis, with current claim activity driven by prior acts. Select Miscellaneous E&O classes have been deemed in-scope for premium refunds due to providing service to non-essential business and these classes are outlined above.
- **Surety E&O Policies** (e.g. Tax Preparers E&O, Notary E&O): E&O policies within this book of business provide coverage to sectors that fall within essential services and therefore there is no substantial reduction in exposure. The current state of novel business practices and heightened stress could lead to an environment more prone to errors and mistakes.
- **Directors & Officers and Fiduciary Liability:** Policies within this book of business provide coverage for which there is no substantial reduction in exposure. Many financial institutions are designated as essential businesses and continue to operate, with many companies having transitioned to remote work arrangements. The current state of the economy and novel business practices may lead to an increase in exposure to loss. For example, COVID-19 related securities class action suits are already emerging as a new exposure for Directors & Officers coverage. Moreover, policies are written on a claims-made basis, with current claim activity driven by prior acts.
- **Employment Practices Liability:** Policies within this book of business provide coverage for which there is no substantial reduction in exposure. Many financial institutions are designated as essential businesses and continue to operate, with many companies having transitioned to remote work arrangements. The current state of the economy and novel business practices may lead to an increase in exposure to loss. Past periods of high unemployment have led to significant increases in the frequency and severity of Employment Practices Liability claims. Additionally, policies are written on a claims-made basis, with current claim activity driven by prior acts.
- **Fidelity Bonds (Employee Dishonesty, Janitorial Services, ERISA, and Blanket Bonds):** Policies in this book of business provide coverage for which there is no substantial reduction in exposure. Historically,

fidelity-type losses have increased during economic down-turns and the various restrictions imposed on businesses, coupled with many employees working remotely may cause gaps in established employee and financial controls due to lack of on-site supervision and relaxed over-sight in general, leading to increased opportunities for dishonesty to occur.

- **Property and First Party Coverages** – Includes Property, Inland Marine, Ocean Marine, and Equipment Breakdown as well as the property portion of Commercial Multi-Peril policies. Loss exposure associated with these policies is primarily tied to the amount of insurance and the risk of perils responsible for the majority of losses (e.g. Fire, Wind, Hail, etc.) is not correlated with economic conditions.
- **Umbrella and Excess Coverage** – The nature of losses covered by these products reflect infrequent but large severity events. Although the underlying auto and liability coverages will experience reduced exposure to loss, this is largely observed in the frequency of claims. Both coverages will likely experience the opposite influences on severity. While reduced traffic density will lead to less auto claims, increased traffic speeds may result in larger losses when accidents do occur. Similarly, for liability, Premises Operations and Products exposure will probably be reduced as revenues, payroll and foot traffic declines. However, the impact on severity is less clear as supply chain disruption may impact repair or replacement costs. Non-essential medical treatments may not be available which may increase Bodily Injury claims. Lawsuits related to negligent management of virus containment may lead to additional lawsuits. The impact on large loss frequency is less clear and will not be known for several years.
- **Contractors E&O, Technology E&O and Life Sciences Products** – These coverages are offered on a claims-made basis, with current claim activity driven by prior acts. Covered incidents giving rise to claims tend to manifest over a long period of time. Therefore, the economic impact on current operations has little effect on the current policy period loss exposure.

Conclusion

In accordance with Bulletin 2020-3, CNA is currently working towards issuing the premium refunds and adjustments outlined above by August 12, 2020 and CNA remains committed to working with our policyholders who have experienced financial hardship as a result of the ongoing COVID-19 pandemic.